

PHILLIP A. TALBERT
United States Attorney
KIMBERLY A. SANCHEZ
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW SATARIANO,

Defendant.

CASE NO. 1:21-CR-00295-JLT SKO

STIPULATION VACATE STATUS CONFERENCE
AND SET A TRIAL DATE, AND REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; ORDER

DATE: February 15, 2023
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

This case is set for a status conference on February 15, 2023 at 1:00 p.m. in front of the Honorable Sheila K. Oberto, U.S. Magistrate Court Judge. The parties stipulate and request to vacate the status conference, and set a trial for November 14, 2023 at 8:30 a.m. Counsel needs additional time to review discovery and conduct additional investigation.

On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the courthouse in June 2021, recognized the continued public health emergency, continued to authorize video or teleconference court appearances in various cases, and noted the court's continued ability under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652, which "authorized the use of videoconference and teleconference technology in certain criminal proceedings under the in the Eastern District of California." This and previous General Orders highlight and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)

1 and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the
2 defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the
3 defendant does not consent and there is a “showing that extraordinary circumstances exist and justice
4 requires the delay.” Here, the defendant consents and there is good cause.

5 Although the General Orders address the district-wide health concern, the Supreme Court has
6 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
7 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
8 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
9 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
10 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
11 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
12 or in writing”).

13 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
14 and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-
15 of-justice continuances are excludable only if “the judge granted such continuance on the basis of his
16 findings that the ends of justice served by taking such action outweigh the best interest of the public and
17 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
18 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
19 the ends of justice served by the granting of such continuance outweigh the best interests of the public
20 and the defendant in a speedy trial.” *Id.*

21 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
22 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
23 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
24 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
25 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
26 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
27 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
28 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a

1 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

2 In light of the societal context created by the foregoing, this Court should consider the following
3 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
4 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
5 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
6 pretrial continuance must be “specifically limited in time”).

7 **STIPULATION**

8 Plaintiff United States of America, by and through its counsel of record, and defendants, by and
9 through defendants’ counsel of record, hereby stipulate as follows:

10 1. Defense counsel needs additional time to review discovery and conduct additional
11 investigation to prepare should this case proceed to trial instead of resolve by a plea. Since the last
12 continuance, the parties have engaged in further plea negotiations and discussions regarding resolution.
13 The parties have had additional discussions regarding sentencing guidelines calculations. The discovery
14 is voluminous, and the parties have worked through some issues related to discovery matters. Defense
15 needs additional time to conduct any additional investigation warranted.

16 2. By this stipulation, defendants now move to vacate the February 15, 2023 status and set a
17 trial for November 14, 2023, and to exclude time from February 15, 2023 to November 14, 2023 under
18 Local Code T4.

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case
21 includes investigative reports, videos, photos, and related documents in electronic form. All of
22 this discovery has been either produced directly to counsel and/or made available for inspection
23 and copying.

24 b) The parties have engaged in further plea negotiations and discussions regarding
25 resolution,. Defense needs additional time to review the revised plea agreement and conduct any
26 additional investigation warranted as a result of that.

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28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 c) The government does not object to vacating the status conference and setting the
2 case for trial on November 14, 2023.

3 d) In addition to the public health concerns cited by the General Orders and
4 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
5 ends-of-justice delay is particularly apt in this case because:

- 6 • Defendants ability to prepare for trial or a plea has been inhibited by the public
7 health emergency;
- 8 • Defendants needs additional time to review discovery, conduct additional
9 investigation, and work towards a potential plea agreement; and
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11 e) Based on the above-stated findings, the ends of justice served by continuing the
12 case as requested outweigh the interest of the public and the defendant in a trial within the
13 original date prescribed by the Speedy Trial Act.

14 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
15 et seq., within which trial must commence, the time period of February 15, 2023 to November
16 14, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local
17 Code T4] because it results from a continuance granted by the Court at defendant's request on
18 the basis of the Court's finding that the ends of justice served by taking such action outweigh the
19 best interest of the public and the defendant in a speedy trial.

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1 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
3 must commence.

4 IT IS SO STIPULATED.

5 Dated: February 10, 2023

6 PHILLIP A. TALBERT
United States Attorney

7
8 /s/ KIMBERLY A. SANCHEZ
KIMBERLY A. SANCHEZ
9 Assistant United States Attorney

10 Dated: February 10, 2023

11 /s/ Steven L. Crawford
Attorney for Defendant
12 ANDREW SATARIANO
13

14 **ORDER**

15 IT IS SO ORDERED.

16 DATED: 2/10/2023

17 Sheila K. Oberto
18 THE HONORABLE SHEILA K. OBERTO
19 UNITED STATES MAGISTRATE COURT JUDGE
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